A

TROLLI MASTER SDN BHD

v.

RHB BANK BHD

B

HIGH COURT MALAYA, KUALA LUMPUR
HASNAH MOHAMMED HASHIM JC
[SUIT NO: D-22-519-2000]
6 OCTOBER 2010

C ***BANKING:*** *Cheques - Forged cheque - Whether cheque issued under plaintiff's signature forged - Whether defendant had right to debit from plaintiff's account - Whether plaintiff was negligent in handling cheque books - Whether plaintiff contributed to the forgery*

D ***EVIDENCE:*** *Expert evidence - Handwriting - Whether expert qualified to examine Chinese handwriting*

TORT: *Conversion - Cheque - Whether cheque issued under plaintiff's signature forged - Whether defendant had right to debit from plaintiff's account - Whether defendant liable to make good the loss - Whether there* E *was element of careless conduct by defendant - Whether plaintiff contributed to the forgery - Whether plaintiff demonstrated reasonable care taken to prevent forgery - Bills of Exchange Act 1949, s. 73A*

The plaintiff company was the customer of the defendant who was F a licensed bank. The plaintiff had requested for cheque books from the defendant, and had started to issue cheques from the said cheque books. The defendant would then clear the cheques for payment and the amount would be debited from the plaintiff's account. The plaintiff brought this action when it discovered that G the defendant had cleared a particular cheque ('P6') that it did not issue. Hence, the defendant had no right to debit the amount from the plaintiff's account. The plaintiff submitted that the signature and the plaintiff's stamp on P6 were forged and relied on the evidence of a document examiner ('PW2'). The issues to H be determined were: (i) whether P6 was forged; (ii) whether the plaintiff was negligent in handling the cheque books (iii) whether the provision of s. 73A Bills of Exchange 1949 was applicable.

I

Held (dismissing the plaintiff's claim with costs):

(1) The signature and the stamp on P6 involved Chinese characters. Therefore it would require someone who could not only read and write in Chinese, but also familiar with Chinese characters to examine the handwriting. PW2 was undoubtedly an expert qualified and having the necessary skill to examine the handwriting. Based on the evidence and explanation given by PW2, the signature on P6 was found to be forged on a balance of probabilities. (paras 25-26 & 30)

(2) At common law the liability of the banker is founded on the tort of conversion, where the banker who pays out on a forged instrument drawn on his customer's account is absolutely liable to make good the loss. This common law principle was codified under the Act. However, in the event there is sufficient evidence to show that the person whose signature has been forged contributed to the forgery, the signature shall operate and shall be deemed to be the signature of such person, pursuant to s. 73A of the Act. (paras 32 & 34-35)

(3) The defendant had complied with all the procedures and common banking practices in the approval, clearing and payment of P6. It was found on the balance of probabilities that P6 was cashed by the defendant in its ordinary course of business and in good faith. There was no element of negligence or careless conduct by the defendant or its officer. (para 43)

(4) The plaintiff failed to demonstrate that all reasonable care was taken to ensure that such forgery did not take place. The forgery was contributed by the plaintiff's own negligence. There were no proper records kept as to the cheques issued by the plaintiff. In fact the plaintiff's director had admitted that he usually does not count the cheque butts and the leaves before keeping the cheque book away. As such, the provision of s. 73A of the Act was applicable. (paras 44-45)

A **Case(s) referred to:**
Dr Shanmuganathan v. Periasamy Sithambaram Pillai [1997] 2 CLJ 153 FC ***(refd)***
Murarilal v. State of MP AIR [1980] SC 531 ***(refd)***
United Asian Bank Bhd v. Tai Soon Heng Construction Sdn Bhd [1993] 2 CLJ 31 SC ***(refd)***
B *Yoong Sze Fatt v. Pengkalen Securities Sdn Bhd [2010] 1 CLJ 484 CA* ***(refd)***

Legislation referred to:
Bills of Exchange Act 1949, ss. 24, 73A
Civil Law Act 1956, s. 12
C Evidence Act 1950, s. 45

For the plaintiff - N Navamalar; M/s Liew, Khong & Co
For the defendant - Andrew Chiew Ean Vooi (Loh Chu Bian with him); M/s Lee Hishamuddin Allen & Gledhill

D *Reported by Melinda Robert*

JUDGMENT

E **Hasnah Mohammed Hashim JC:**

[1] The plaintiff is a registered company with its business address at Lot 525, 42500 Mukim Teluk Panglima Garang, Kuala Langat, Selangor. The plaintiff was established in 1999 and the
F directors of the plaintiff are PW1. Wu Ching Fa, (deceased) Lim Long Fa and another female director (PW1 in evidence could not remember her name). The defendant is a licensed bank. In 1994 the bank's branch was the United Malayan Banking Corporation Berhad. The plaintiff was a customer of the defendant and had
G opened a current account at the defendant's branch at Jenjarom, Selangor. On or about October 1994 the plaintiff was granted an Overdraft Facility for the sum of RM500,000 by the defendant. The authorized signatories for the current account were Wu Ching Tsang (PW1) and Wu Ching Fa.

H **[2]** The plaintiff's director PW1 applied for two cheque books on 22 November 1999. The defendant issued the two cheque books as requested. The first cheque book contained cheques from 1888551 to 188600 and the second cheque book contained cheques from 1888601 to 188650.

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[3] The plaintiff's driver (PW4) collected the cheque books form the bank and subsequently passed them to the plaintiff's accounts clerk one Ann Eu Bee ("Ann"). On 30 November 1999 the plaintiff acknowledged receipt of both cheque books with no complaints. The plaintiff started issuing cheques from the two cheque books prior to 6 December 1999. Subsequently the plaintiff's cheque bearing the number 188648 (P6) was issued and made payable to one Wong Peng Kong for the amount of RM523,119. On 11 December 1999 the said cheque was cleared for payment. The amount of RM523,119 was debited from the plaintiff's account and the monies were paid into the account of Wong Peng Kong in Bank Pertanian. On 16 December 1999 the defendant notified the plaintiff that there were insufficient funds in its account to clear cheques drawn against the plaintiff's account. The plaintiff claimed that it had not issued the said cheque (P6).

[4] The plaintiff filed a writ and a statement of claim against the defendant for a sum of RM523,119 being the total amount of the cheque and for a declaration that the defendant has no right to debit the plaintiff's current account based on the aforesaid sum:

1. suatu deklarasi bahawa Defendan tidak mempunyai hak untuk mendebit akaun semasa Plaintif berdasarkan jumlah sebanyak RM523,119.00;

2. pembayaran balik wang berjumlah RM523,119.00;

3. faedah pada kadar 8% setahun ke atas RM523,119.00 daripada 16.2.2000 sehingga penjelasan;

4. mengembalikan faedah keatas RM523,119.00 yang telah didebitkan daripada akaun semasa Plaintif dari 11.12.99;

5. kos; dan

6. relif lain atau selanjutnya yang difikirkan berpatutan dan saksama.

[5] The issues to be determined are as follows:

a) whether Wu Ching Fa's signature on P6 was forged;

b) whether the company stamp on P6 was forged;

c) whether the plaintiff was negligent in the handling of the cheque books;

A d) whether the defendant's liability was on tort of conversion whereby it is strict liability when the defendant cleared and recognised the said cheque and paid to the third party from the plaintiff's account without the knowledge and approval from the plaintiff;

B e) If the plaintiff was negligent, then:

i) whether the defendant is entitled to a defence under s. 73A Bills of Exchange Act 1949; and

C ii) whether the amount claimed by the plaintiff should be reduced in whole or in part to the extent of the plaintiff's negligent under s. 12 Civil Law Act 1956.

Whether Wu Ching Fa's Signature On The Cheque (P6) And
D **The Company's Stamp On P6 Was Forged**

[6] The standard of proof in a case involving forgery is on a balance of probabilities as held by the Supreme Court in the case of *United Asian Bank Bhd. v. Tai Soon Heng Construction Sdn. Bhd.* [1993] 2 CLJ 31:

E

> The standard of proof required in a case of forgery on the facts of such a case as the one before the Court is not that of beyond reasonable doubt, but of a balance of probabilities.

F **[7]** Unfortunately in this case Wu Ching Fa (the deceased) the person who the plaintiff alleged had his signature forged has passed away. Therefore evidence was mainly led through Wu Ching Tsang (PW1) the other director of the plaintiff and the brother of the deceased. Both PW1 and the deceased were the
G authorised signatories for the cheques. In his witness statement he had said that the plaintiff only discovered of the cheque that had the forged signature on 16 December 1999 when he was notified by his accounts clerk, Miss Ann Eu Bee of the insufficient funds in the RHB account. The defendant had informed Miss Ann of
H the insufficient funds. PW1 believed that the signature of the deceased was forged based on the opinion given by the handwriting expert PW2. P6 was credited into the account of one Wong Peng Kong on 11 December 1999 at the Bank Pertanian Banting branch.

I

[8] Normally the cheque books of the plaintiff are kept by his accounts clerk Miss Ann. According to PW1 the cheque books would be kept in a safe box. If the accounts clerk wish to issue cheques the accounts clerk will pass the cheques to the directors for verification, checking and finally for their signature. Miss Ann resigned in 2000. There was however no evidence led to demonstrate that attempts were made by the plaintiff to trace and subpoena Miss Ann as a witness as she would have been able to shed some light as to the not only to the issuance of cheques by the plaintiff but also to matters relating to the cheque books such as how they were kept, whether she kept a record of cheques issued, whether she had checked the cheque books daily, whether she had realised that one cheque was missing etc. Miss Ann according to PW1 was in charge of the plaintiff's account and had access to the cheque books. Miss Ann's assistant one Miss Chin was also not call as a witness. No evidence was led to show that attempts were made to call her or to subpoena her as a witness.

[9] Immediately after being told of the cheque that was allegedly not signed by the plaintiff's directors, the plaintiff made a police report of the forged cheque. In his examination in chief and also during cross examination PW1 told the court that he believed that the deceased's signature was forged based on the opinion given by the Expert, Mr. Wong Kong Yow (PW2). PW1 did not testify whether he could confirm the signature of the deceased. PW1 has said during cross examination that he asked the deceased whether it was his signature on the cheque:

> Wu Ching Fa did not signed the cheque personally. After this event happened I did asked Wu Ching Fa whether he signed. He said he did not sign this cheque. I can't recall whether anyone was with me at that time.

[10] PW1 also gave evidence that despite the deceased having told him that it was it was not his signature on the cheque in question he did not asked the deceased to put it in writing. The plaintiff did not call any other witness to support the evidence given by PW1 that the deceased had indicated that it was not his signature.

[11] PW2 was the expert witness called by the plaintiff as to the determination whether the signature and the company's stamp on the cheque in question were forged. PW2 is a document examiner attached to the Department of Chemistry Malaysia.

[12] PW2 is a gazetted Document Examiner from 2 January 1997 until to this date. According to P18, PW2 has examined about 38,676 documents and has given evidence in both civil and criminal trials. He conducted the examination in the year 2000.

[13] PW2's examined the sample signatures provided by the plaintiff. The sample signatures are as shown on pp. 120-121 of bundle A. According to PW2 he had conducted an examination as follows:

> Pemeriksaan yang telah dilaksanakan
>
> – tandatangan pemegang akaun dan cek telah diteliti
>
> – kedua-dua cop tulisan Cina
>
> – inflasi cop syarikat
>
> – kedudukan posisi infalsi diatas cop tersebut.

[14] PW2's findings as to the signature on the cheque:

> Pemeriksaan yang pertama tandatangan pemegang akaun pada cek yang dipertikai berbanding dengan contoh di dalam laporan pemeriksaan menunjukkan ciri yang tidak sama. Pada pemeriksaan saya tandatangan diatas cek bukanlah tandatangan pemegang akaun.

[15] As to the company's chop PW2's said in evidence that after conducting the examination:

> Saya tidak dapat beri pendapat samada imprasi cop berasal dari tulisan Cina yang berkenaan.

[16] During cross examination PW2 explained the procedure:

> Kaedah perbandingan – dengan mengambilkira ciri perbandingan dan perbezaan dengan menguna peralatan forensik,video spectra versi 4 dan microscope serta sumber cahaya peralatan forensik. Ciri-ciri yang sama – bagi contoh tulisan – the sequence of strokes similar, water radial similar for the three characters, the formation similar, alignment similar. The formation of the structural details also looks similar.

[17] The learned counsel for the plaintiff submits that there is sufficient evidence that supported the expert's conclusion on the issue of the forged signature. He further submits that there was no direct evidence contradicting the report of PW2, his report

was corroborated by undisputed evidence. Therefore according to the plaintiff it was up to the defendant to challenge the evidence of PW2.

[18] The learned counsel for the defendant submits that the fact that the deceased signature in P6 is different from the other sample signatures is not evidence that the signature was forged. It could merely mean that the deceased had signed P6 in a different style. He further submits PW2's report does not explain the method which he used to examine the signature in P6 against the sample signature. PW2 had only explained the method during cross examination and that he had used forensic devices to assist him to examine the signatures. PW2 however did not explain how he came to the conclusion that the signature is different from the sample signature. Therefore it is the defendant's submission that the opinion of PW2 is unreliable and that court should not rely on PW2's evidence and P7 in determining the issue of forgery.

[19] The standard of proof in cases involving forgery is proof on a balance of probabilities. Section 45 of the Evidence Act 1950 provides that,

> When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identify or genuineness of handwriting or finger impressions, the opinions upon the point of persons specially skilled in the foreign law, science or art, or in questions as to identity or genuineness of handwriting or finger impressions, are relevant facts.

[20] The evidence by a handwriting expert can never be conclusive because it is only opinion evidence. It is trite law that the principal object of expert evidence is merely to assist the court to form its own opinion. The Federal Court in the case of *Dr. Shanmuganathan v. Periasamy Sithambaram Pillai* [1997] 2 CLJ 153 referred to the Supreme Court of India's decision in the case of *Murarilal v. State of M.P.* AIR [1980] SC 531, 534 where it was held that:

> ... the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. But that is a far cry from doubting the opinion of a handwriting expert as an invariable rule and insisting upon substantial corroboration in every case, howsoever the opinion may be backed by the soundest of reasons. It is hardly fair to an expert to view his opinion with an initial suspicion and to treat him as an inferior sort of witness ... His opinion has to be tested by the acceptability of the reasons

A given by him. An expert deposes and not decides. His duty is "to furnish the Judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the Judge to form his own independent judgment by the application of these criteria to the facts proved in evidence."

B **[21]** PW2 gave evidence that he had examined the signature based on the samples given. He was also given a copy of the specimen card of the signature and the company's stamp (exh. C p. 9). PW2 during cross examination said that the signature:

C Cirinya kekal perbezaan daripada bentuknya.

[22] He explained how he had conducted the examination:

Kaedah perbandingan – dengan mengambilkira ciri perbandingan dan perbezaan dengan menguna peralatan forensic, Video Spectra
D versi 4 dan microscope serta sumber cahaya peralatan forensik.

[23] PW2 also stated during cross examination that:

Saya dapati 6 perbezaan dimakmal. First character – commanding stroke goes upwards but not the in the specimen. Allowance for
E variation. In exhibit B – tiada upward strokes.

[24] The counsel for the defendant during cross examination suggested to PW2 that the samples of the signatures given to him was insufficient for him to conduct such examination and to give
F an opinion. PW2 was asked by the counsel for the defendant to compare the signatures of the deceased on the sample given on p. 120 and also on p. 121 of bundle A. In his evidence he said that the Chinese character on p. 120 has no hook and the one on p. 121 has a hook. However, he also said in evidence that he
G would need to do verification. On re-examination PW2 said that his opinion the differences due to natural variation was based on visual examination and however he can only determine with the assistance of forensic equipment:

H Saya perlu alat untuk melihat tandatangan dengan contoh specimen yang lain.

[25] The defendant's counsel contends that the difference in the signature on P6 is because of natural variation and therefore the signature on P6 was not a forged signature.

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[26] To my mind PW2 had conducted a thorough examination comparing the specimen signatures and the company's stamp with that of the signature and stamp on P6. Both signature and stamp involved Chinese characters. Therefore it requires not only someone who could read and write in Chinese but also familiar with the Chinese characters. Abdul Malik Ishak JCA in the case of *Yoong Sze Fatt v. Pengkalen Securities Sdn Bhd* [2010] 1 CLJ 484 said:

> It is the duty of the court to satisfy itself that the "expert" is indeed an expert specially qualified, armed with the necessary skill and experience and has a vast knowledge in the field of enquiry carried out by him. The court would also want to know the duration of time the "expert" has engaged himself in his field of expertise and whether that is his only occupation and in which court he has testified. Generally, the court is interested to know the expert's background. The purpose is simply to show the competency of the expert. It is for these reasons that the expert will be asked about his general and technical education together with the special studies which he may have undertaken. Competency of the expert may be shown by drawing attention to the ways in which the expert has been recognised as an authority in his field. Thus, the expert may allude to the schools, associations and seminars where he has lectured and whether he has been bestowed with special honours or degrees by prominent universities. And publication of writings in recognized journals is also good evidence of the extent of the expert's competency. In short, the "expert" must be a qualified person.

[27] Based on PW18 undoubtedly PW2 is an expert qualified and having the necessary skills to examine handwriting. PW2 explained his findings during examination in chief as follows:

> Pemeriksaan yang pertama tandatangan pemegang akaun pada cek yang pertikai berbanding dengan contoh didalam lapuran. Pemeriksaan menunjukkan ciri yang tidak sama. Pada pemeriksaan saya, tandatangan diatas cek bukanlah tandatangan pemegang akaun.
>
> Pemeriksaan yang kedua, kedua tulisan Cina masing-masing dibanding dengan contoh-contoh imprasi cop tulisan Cina yang berkenaan di dokumen D2, D3, D4, D5, D6, D7 dan D8 seperti laporan kimia. Saya tidak memberi pendapat samada imprasi cop berasal dari tulisan Cina yang berkenaan.

A Pemeriksaan yang ketiga imprasi cop syarikat di cek yang dipertikai dibanding dengan contoh imprasi cop di dokumen D2, D3, D4, D5, D6, D7 dan D8 di laporan kimia menunjukkan imprasi cop diatas cek berbeza dari imprasi cop syarikat dalam segi reka bentuk.

B Pemeriksaan yang keempat kedudukan posisi tulisan Cina dibanding dengan kedudukan posisi imprasi cop tulisan Cina di D2, D3, D5, D6 dan D7 menunjukkan imprasi posisi tulisan Cina berbeza.

C Secara keseluruhan tandatangan tulisan Cina, kedudukan cop tulisan dan cop syarikat adalah berbeza. Manakala cop imprasi Cina pada cek tersebut saya tidak boleh beri pendapat.

[28] In his report (P7) PW2 had stated the following:

D Pemeriksaan berdasarkan kepada perbandingan dokumen-dokumen yang ada, bagi pemeriksaan '1' menunjukkan ciri-ciri tulisan yang tidak menyerupai. Justeru itu, saya berpendapat bahawa Pemeriksaan '1', tandatangan 'PEMEGANG AKAUN' pada cek di '1' bukanlah tandatangan sebenar penulis contoh-contoh tandatangan tersebut. Bagi Pemeriksaan '2', saya tidak dapat E memberi pendapat samada kedua-dua imprasi cop tulisan Cina 'PEMEGANG AKAUN' pada cek di '1' masing-masing telah berasal daripada contoh-contoh imprasi cop tulisan cina yang berkenaan masing-masing ataupun tidak.

F **[29]** PW2 was referred to documents in particular the signature specimen card (PI) with the signature of the deceased in Chinese characters. PW2 had stated that there are some differences that could be due to natural variation however he said that he would need forensic device to confirm such an opinion. Therefore I am of the view that the evidence of PW2 can be safely relied upon G by this court.

[30] As to the company's stamp PW2 was unable give a definite opinion whether it was forged as he said in evidence:

H Saya tidak dapat memberi pendapat samada imprasi daripada cop tersebut. Terdapat kecacatan di cop tersebut. Cop yang selalu digunakan cacat.

On your right the ink smeared you do not know if it is defective or any other reason.

I

[31] However based on the evidence of PW2 I am satisfied that on a balance of probabilities the signature of the deceased on P6 is a forged signature.

Whether The Defendant's Liability Was On Tort Of Conversion Whereby It Is Strict Liability When The Defendant Cleared The Said Cheque And Paid To The Third Party From The Plaintiff's Account Without The Knowledge And Approval From The Plaintiff

[32] At common law, the liability of a banker is founded on the tort of conversion, which is a tort of strict liability. A banker who pays out on a forged instrument drawn on his customer's account is absolutely liable to make good the loss. The forged instrument is wholly inoperative and a banker has no authority, actual or implied, from his customer to act on it. In *United Asian Bank Bhd. v. Tai Soon Heng Construction Sdn. Bhd* [1993] 2 CLJ 31 the court said:

> At common law, a customer owes his banker only two duties. The first is to refrain from drawing a cheque in such a manner as may facilitate fraud or forgery. The second is a duty to inform the bank of any forgery of a cheque purportedly drawn on the account as soon as the customer becomes aware of it. There does not exist, at common law, a further duty on the part of a customer to take precautions in the general course of his business to prevent forgeries on the part of his servants. Neither is there at common law, in the absence of a contract to the contrary, a duty imposed upon the customer to inspect his periodical bank statements to ensure that his account is being properly maintained by the bank.

[33] At common law the liability of a banker is founded on the tort of conversion and a banker who pays out on a forged instrument drawn on his customer's account is absolutely liable to make good the loss. This common law principle has been codified under the Bills of Exchange Act 1949. Section 24 of the Bills of Exchange Act 1949, reads:

> Subject to the provisions of this act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefore or to enforce payment thereof against any party thereto can be acquired through or under that signature,

A unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority:

Provided that nothing in this section shall effect the ratification of an unauthorized signature not amounting to a forgery.

B

[34] Under this aforementioned provision a customer cannot even recover if he has represented to his banker that the forged signature is effective and that the instrument is accordingly good for payment.

C

[35] However, s. 73A of the same Act provides as follows:

Notwithstanding section 24, where a signature on a cheque is forged or placed thereon without the authority of the person whose signature it purports to be, and that person whose
D signature it purports to be knowingly or negligently contributes to the forgery or the making of the unauthorized signature, the signature shall operate and shall be deemed to be the signature of the person it purports to be in favour of any person who in good faith pays the cheque or takes the cheque for value.

E **[36]** This section can be invoked if there is sufficient evidence to show that the person whose signature has been forged contributed to the forgery or the making of the unauthorised signature.

F **[37]** The plaintiff submits that since the signature on P6 is forged the defendant had acted negligently by clearing the forged cheque. Therefore the defendant has no mandate to make payments on the said cheque. If the plaintiff is found to be negligent then s. 73 of the Act will apply. The court will now have to determine
G whether the plaintiff was negligent in the handling of the cheque book in order to invoke s. 73 of the Act.

[38] Whether The Plaintiff Was Negligent In The Handling Of The Cheque Books; If The Plaintiff Was Negligent, Then:

H i) whether the Defendant is entitled to a defence under s. 73A Bills of Exchange Act 1949; and

ii) whether the amount claimed by the plaintiff should be reduced in whole or in part to the extent of the plaintiff's negligent
I under s. 12 Civil Law Act 1956.

[39] The duty of the bank is to honour its customer cheques if there are sufficient funds. At common law, a customer owes his banker only two duties. The first is to refrain from drawing a cheque in such a manner as may facilitate fraud or forgery. The second is a duty to inform the bank of cheque purportedly drawn on the account as soon as the customer becomes aware of it.

[40] The counsel for the plaintiff submits that all reasonable taken to keep the cheque books in the safe at the end each day. According to PW1 both directors ie, the deceased and he would keep their own individual Chinese stamps. PW1 said during cross examination that in the plaintiff's company when a cheque was issued at that time that Miss Ann the accounts clerk would prepared the cheque. She will then passed the cheque to Wu Ching Fa to be checked and examined after that it will then be passed to PW1 to do the same thing. If there is no problem both the directors will signed and stamped the cheque. As for the collection of cheque books this was again the duty and responsibility of the Accounts clerk, Miss Ann. PW1 however could not confirm whether Miss Ann had checked the cheque books after it has been collected from the bank. He also said in evidence that he did not check the cheque book when it was given to him for safe keeping at the end of the day. In respect of P6 they had only realised that the cheque leave was missing after being informed by the bank of the insufficient funds. When PW1 confirmed that the plaintiff kept a log book of payments made however the ledger of the cheques issued was prepared by the accounts clerk, Miss Ann. Unfortunately PW1 did not bring the log book or the ledger. When asked by defence counsel during cross examination that there should be steps taken to check whether there are adequate funds before cheques are drawn PW1 answered:

> This is the job and responsibility of the accounts department.

[41] When PW1 was re-examined he confirmed that he did not check the cheque butts before keeping the cheque book in the safe.

[42] DW1 gave evidence that the process of verification of cheques are done by SPICK (Sistem Penjelasan Imej Cek) which is a computerised system of cheques clearing system for the whole of Malaysia. SD2 was the Assistant Manager in the KL SPICK

A Centre for RHB Bank and was posted there since 1997. In his witness statement DW2 explained the procedure of the cheque clearing process:

> When a cheque is drawn against RHB bank account, RHB Bank
B needs to ensure that the cheque has been properly drawn before making payment under the cheque. This process is generally known as "cheque clearing". During the clearing process, RHB Bank officers at the SPICK Centre will verify the cheques by checking for, among others, irregularities in the signatures and
C cheques. If the Bank does not detect any irregularities, the cheques will be cleared and payment will be made to the payee of the cheques.

[43] DW2 also said that during the clearing process an image of the cheque will be shown on the computer terminal. An image of
D the specimen signature for the account holder will also be shown on the computer. The verifier will then compare the cheque image against the specimen signature to determine whether there is any discrepancy. If there is any discrepancy, it will be send back to the branch where the cheque was drawn. The branch will contact
E the customer. If there is no discrepancy the cheque will be cleared. DW2 recognised the P6 and had cleared the cheque after comparing the signature of the cheque with the specimen signature on the computer screen. The signature looked substantially the same and since there is no materially discrepancy he cleared the
F cheque. DW3 was the second verifier of the cheque and confirmed since there was no discrepancy and no irregularities the cheque was cleared.

[44] I am of the view that the defendant had complied with all the procedures and common banking practices in the approval,
G clearing and payment of P6. One could not expect DW2 and DW3 to be able to ascertain that the signature of the deceased was forged as even PW2 had determined with the assistance of forensic device/tools. Therefore on the balance of probabilities the court finds that P6 was cashed by the defendant in its ordinary
H course of business and on good faith. I find that the defendant had complied with all the normal procedure for that purpose and there is no element of negligence or careless conduct by the defendant or its officer.

I

[45] The court is of the view that the plaintiff has failed to demonstrate to the court that all reasonable care was taken to ensure that such forgery could take place. The financial administration in particular payment and issuance of cheques was taken care of by the accounts clerk Miss Ann Eu Bee. No attempts were made to trace or to subpoena her to give evidence. Nevertheless even without her evidence PW1 could have shown the log books or records of the company of the cheques issued during the time of the incident. There was also no evidence led through PW1 who actually supervise Miss Ann or whether she was supervised at all. Miss Ann was entrusted with the cheque books daily and she had prepared the cheques. This court is of the view that the forgery was contributed by the plaintiff's own negligence as there were no records shown on the issuance of cheques by the plaintiff, whether there was proper record kept as to the cheques issued. PW1 admitted in examination that he never counted the cheques butts and the leaves before he kept them every day.

[46] On the facts of the case s. 73A of the Bills of Exchange Act 1949 applies in the present case.

[47] Based on the reasons set above and having evaluated all the evidence tendered in court I find that on a balance of probabilities, the plaintiff has failed to establish its claim against the defendant. Therefore the plaintiff's claim is dismissed with cost.